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July 22, 2010

**VIA CM/ECF**

Magistrate Judge Charles B. Day  
United States District Court for the District of Maryland  
Greenbelt Division, 6500 Cherrywood Lane  
Greenbelt, Maryland 20770

Re: *Beyond Systems, Inc. v. World Avenue USA, LLC, et al.*, Case No. 08 cv 0921

Magistrate Judge Day:

This letter responds to Beyond Systems, Inc.'s ("BSI") Opposition filed yesterday morning at DE 351 in response to Defendant World Avenue USA, LLC's ("WAUSA") Letter dated July 16, 2010 filed at DE 340 and renews our request for a ten (10) minute phone call on WAUSA's Motion for Expedited Discovery filed earlier that day at DE 338.

The Motion for Expedited Discovery requested expedited production of documents and a privilege log in connection with a Request for Production that WAUSA issued to discover information about its Motion to Dismiss for Fraud on the Court and its Memorandum of Points and Authorities ("Memorandum") in Support of the Motion filed on July 6, 2010 at DE 323, 323-1. WAUSA had asked for a response and production of documents to the Request for Production within seven (7) days, and the production of a privilege log within ten (10) days. A true and correct copy of the Fifth Request for Production of Documents to Plaintiff is attached hereto as Exhibit 1. As explained below, the new revelation contained in BSI's Opposition at DE 351 highlights the need for expedited consideration as requested in its July 16<sup>th</sup> Letter and Motion for Expedited Discovery.

**I. BSI's Fraud Upon The Court Continues.**

BSI made the following representation to this Court at DE 351, Page 2:

*WAUSA is miffed that Plaintiff included the following phrase in some of the subpoenas to non-parties:*

*All DOCUMENTS RELATING TO any federal, state, or local government's investigation into the activities of any e-mail marketing firm including Scott Richter/OptInRealBig/Media Breakaway and the Ralsky Spam GangRALSKEY SPAM GANG, including inquiries by the Attorney General offices of Florida, New York, and Texas, or by any branch of the*

ALBANY  
AMSTERDAM  
ATLANTA  
AUSTIN  
BOSTON  
CHICAGO  
DALLAS  
DELAWARE  
DENVER  
FORT LAUDERDALE  
HOUSTON  
LAS VEGAS  
LONDON\*\*  
LOS ANGELES  
MIAMI  
MILAN\*\*  
NEW JERSEY  
NEW YORK  
ORANGE COUNTY  
ORLANDO  
PALM BEACH COUNTY  
PHILADELPHIA  
PHOENIX  
ROME\*\*  
SACRAMENTO  
SHANGHAI  
SILICON VALLEY  
TALLAHASSEE  
TAMPA  
TOKYO\*\*  
TYSONS CORNER  
WASHINGTON, D.C.  
WHITE PLAINS  
ZURICH  
\*OPERATES AS GREENBERG  
TRAURIG MAHER LLP  
\*\*STRATEGIC ALLIANCE

*Federal Government including the FBI, the Justice Department or the FTC.*

WAUSA was most certainly not complaining about the above-quoted “phrase in some of the subpoenas to non-parties.” Until yesterday, WAUSA had never seen this language.

This quoted language is found nowhere in the text of the 38-page Memorandum, the 28 Exhibits to the Memorandum comprised of 516 pages, and not in the 23 purportedly genuine subpoenas supplied by BSI to WAUSA, and not in the five secret subpoenas that WAUSA has discovered to date. To be certain, the language that WAUSA focuses on in its Memorandum centered on Paragraph 5 of the purported copies of the subpoenas, and on Paragraph 5 of the secret subpoenas that WAUSA later discovered were completely different, and not the language that BSI has now quoted to the Court in its Opposition at Page 2. The difference can be seen below:

Language of Secret Subpoenas Quoted In WAUSA’s Memorandum At DE 323-1, Pages 23-27.	“Phrase” That “Plaintiff included” “In Some Of The Subpoenas To Non-Parties” Quoted In Page 2 of BSI’s Opposition At DE 351.
<p><i>All DOCUMENTS produced to or RELATING TO investigations and/or litigation against <b>WORLD AVENUE</b>, MAILCOMPANYX, ACCELERATEBIZ, the RALSKY DEFENDANTS, or any other BULK EMAILER and RELATING TO illegal marketing, including those by:</i></p> <p><i>a. Any United States Attorney’s Office in the United States and/or any of its Territories;</i></p> <p><i>b. The Federal Bureau of Investigations</i></p> <p><i>* * * *</i></p> <p><b>[emphasis added]</b></p>	<p><i>All DOCUMENTS RELATING TO any federal, state, or local government’s investigation into the activities of any e-mail marketing firm including Scott Richter/OptInRealBig/Media Breakaway and the Ralsky Spam GangRALSKY SPAM GANG, including inquiries by the Attorney General offices of Florida, New York, and Texas, or by any branch of the Federal Government including the FBI, the Justice Department or the FTC.</i></p>

Unbelievably, BSI cites document request language that does not even reference either of the named and served defendants in this case -- WAUSA or World Avenue Holdings.<sup>1</sup> Rather than come clean, BSI tries to minimize the significance of its actions by ignoring the language Defendants cited from the secret subpoena they had discovered, quoting from another version of a document request in an entirely different version of still another new, secret subpoena Defendants have never seen before, and creating a straw man defense derived therefrom. In April, the Court ordered BSI to turn over all third-party subpoenas. DE 351 demonstrates BSI has not complied. An expedited ten (10) minute phone call on the Motion for Expedited Discovery should be granted for this reason alone.

<sup>1</sup> BSI’s failure to include WAUSA or World Avenue Holdings in the cited request raises a question of whether it is issuing subpoenas actually intended to elicit admissible evidence.



## II. The Truth Is Not “Collateral.”

BSI calls this a “collateral” issue. It is terribly wrong for two reasons. As a threshold matter, defying a Court’s Order for forty days is not “collateral.” DE 212. Now there is evidence in BSI’s own filing that the Court’s Order has been defied for more than ninety days. Moreover, a subpoena is a Court Order.<sup>2</sup> It is axiomatic that the abuse of a Court Order is not “collateral.”

This Court previously ordered BSI to correct its failure to follow rules allowing parties the privilege to act on the Court’s behalf in issuing subpoenas. BSI has flouted the Order and, in doing so as revealed in DE 351, has caused greater harm than initially perceived. BSI tried to cover up both wrongful acts - abusing the subpoena privilege and disobeying the Court’s April Order - by 1) producing to WAUSA bogus Subpoenas that were materially different than the Subpoenas secretly served on non-parties, *see* Comparison below; and 2) lying to the Court by claiming the bogus Subpoenas were the real ones it actually served. In both instances, BSI’s conduct was designed to conceal BSI’s asking in the secret Subpoenas about non-existent FBI and U.S. Attorney’s Office investigations against WAUSA. BSI sought to conceal this language because it feared the consequences should the truth become known. Still fearing those consequences, BSI now seeks to minimize what it did as “collateral” to the case. Yet there can be nothing “collateral” about abusing the subpoena privilege, disobeying a Court Order and lying to the Court to avoid getting caught.

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<sup>2</sup> *See Higginbotham v. KCS Int’l, Inc.*, 202 F.R.D. 444, 455 (D. Md. 2001) (“Even though subpoenas are issued by attorneys, they are issued on behalf of the Court and should be treated as orders of the Court”).

**Bogus Subpoena Produced February 8, 2010**

Issued by the  
**UNITED STATES DISTRICT COURT**  
 DISTRICT OF MARYLAND

Beyond Systems, Inc., Plaintiff

**SUBPOENA IN A CIVIL CASE**

World Avenue U.S.A., LLC, et al., Defendants

Case Number: Dist Ct MD 08-cv-0021 (PJM)

Direct Brands, Inc.  
 TO: 1 Penn Plaza 250 W. 34th St. 4th Floor NY NY 10119  
 c/o Corporation Trust Company, Registered Agent  
 1209 Orange St. Wilmington DE 19801

☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY: \_\_\_\_\_ COURTROOM: \_\_\_\_\_  
 DATE AND TIME: \_\_\_\_\_

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION: \_\_\_\_\_ DATE AND TIME: \_\_\_\_\_

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
 See Attachment A.

**Box Checked**

PLACE: DEFENDANT'S HOME 401 EAST JEFFERSON ST. SUITE 201 ROCKVILLE MD 20850 DATE AND TIME: 2/19/2010  
 (301)251-9880

☒ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below:  
 PLACE: \_\_\_\_\_ DATE AND TIME: \_\_\_\_\_

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

TESTIFYING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT): Michael S. Rothman (Attorney for Plaintiff) DATE: 1/8/2010  
 (TESTIFYING OFFICER'S NAME, ADDRESS AND PHONE NUMBER)  
 Michael S. Rothman 401 East Jefferson St. Suite 201 Rockville MD 20850 (301)251-9880

(See Rule 17, Federal Rules of Civil Procedure, Part C & D on next page)

**Note the "S."** (Indicate, how do you spell your name?) **No "S" on word 'Plaintiff'**

**Bogus Subpoena Signature Materially Different**

**Secret Subpoena Issued January 8, 2010**

Issued by the  
**UNITED STATES DISTRICT COURT**  
 DISTRICT OF MARYLAND

Beyond Systems, Inc., Plaintiff

**SUBPOENA IN A CIVIL CASE**

World Avenue U.S.A., LLC, et al., Defendants

Case Number: Dist Ct MD 08-cv-0021 (PJM)

Direct Brands, Inc.  
 TO: 1 Penn Plaza 250 W. 34th St. 4th Floor NY NY 10119  
 c/o Corporation Trust Company, Registered Agent  
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PLACE OF TESTIMONY: \_\_\_\_\_ COURTROOM: \_\_\_\_\_  
 DATE AND TIME: \_\_\_\_\_

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PLACE OF DEPOSITION: \_\_\_\_\_ DATE AND TIME: \_\_\_\_\_

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
 See Attachment A.

**Box Circled/Unchecked**

PLACE: DEFENDANT'S HOME 401 EAST JEFFERSON ST. SUITE 201 ROCKVILLE MD 20850 DATE AND TIME: 2/19/2010  
 (301)251-9880

☒ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below:  
 PLACE: \_\_\_\_\_ DATE AND TIME: \_\_\_\_\_

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

TESTIFYING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT): Michael S. Rothman (Attorney for Plaintiff) DATE: 1/8/2010  
 (TESTIFYING OFFICER'S NAME, ADDRESS AND PHONE NUMBER)  
 Michael S. Rothman 401 East Jefferson St. Suite 201 Rockville MD 20850 (301)251-9880

(See Rule 17, Federal Rules of Civil Procedure, Part C & D on next page)

**Note no "." after "S"** (Indicate, how do you spell your name?) **Use of word "Plaintiffs"**

**Secret Subpoena Signature Materially Different**

### III. BSI's Assertions to The Court Are Not Undisputed.

Finally, BSI tries to justify the content of the secret Subpoenas by stating that "[i]t is undisputed that ... that Mr. Ralsky was a marketer for World Avenue before he began his federal prison term." DE 351, p. 2, ¶ 6. Contrary to BSI's statement, its allegation is not undisputed and BSI is on notice of same because WAUSA denied the allegation in its Answer.<sup>3</sup> What is undisputed is that BSI -- in a stunning continuation of the misconduct -- has again violated its duty of candor to the Court by claiming WAUSA was "miffed" about an entirely different

<sup>3</sup> BSI apparently lifted hearsay assertions from an internet web site in order to accuse WAUSA of being linked with Ralsky.

question than the one WAUSA cited in its Motion to Dismiss, evidently in hopes of diverting attention to a different question that BSI may feel is less offensive.

It is very harmful to have someone use secret judicial process to falsely tell others that one is being investigated by the FBI. This very harmful action has been knowingly and intentionally concealed, and the Defendant needs expedited relief now that it has begun to realize what has been done to it. We respectfully request ten (10) minutes of the Court's time on an expedited basis to consider the Motion for Expedited Discovery at DE 338, which requests a shortening of the time to produce documents and a privilege log for a Request for Production that would otherwise be due on August 12th.

Respectfully Submitted,

/s Sanford M. Saunders, Jr.

Sanford M. Saunders, Jr.

cc: Stephen H. Ring, Esq.  
Michael Rothman, Esq.  
Nicoleta Burlacu, Esq.  
Kenneth A. Horky, Esq.  
John L. McManus, Esq.